

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.402 OF 2006**

Association of Allocated)
Government Servants, from Ex-)
Madhya Pradesh & Hyderabad)
States, having its address)
at Y-1/9, Govt. Colony, Bandra)
(East), Mumbai-400 051.)
through Shri Adlakhia Hiralal)
Nandkishore, President)..PETITIONER

Versus

1.The State of Maharashtra)
notice to be served upon the)
Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)
of Home Affairs, New Delhi.)..RESPONDENTS

WITH

WRIT PETITION NO.383 OF 2006

Smt.Shalini K. Chincholikar)
Wd/o.Shri K.A.Chincholikar)
residing at B-141/3, Govt.Colony)
Bandra (E), Mumbai-400 051.)..PETITIONER

Versus

1.The State of Maharashtra)
notice to be served upon the)
Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)
of Home Affairs, New Delhi.)..RESPONDENTS

WITH

WRIT PETITION NO.384 OF 2006

Ms.Kishwar Ara Husain)
D/o.Sayyed Akhtar Husain,)
residing at B-43/2, Bandra)

Govt. Colony, Bandra (E),)
Mumbai-400 051.)..PETITIONER

Versus

1.The State of Maharashtra)
notice to be served upon the)
Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)
of Home Affairs, New Delhi.)..RESPONDENTS

WITH

WRIT PETITION NO.755 FO 2006

Y.R. Deo,)
residing at Y-12/18, Govt.Colony)
Bandra (E), Mumbai-400 051.)..PETITIONER

Versus

1.The State of Maharashtra)
notice to be served upon the)

Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)
of Home Affairs, New Delhi.)..RESPONDENTS

WITH
WRIT PETITION NO.780 OF 2006

Madhukar Rajaram Karambelkar,)
residing at B-49/7, Govt. Colony)
Bandra (E), Mumbai-400 051.)

Versus

1.The State of Maharashtra)
notice to be served upon the)
Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)

of Home Affairs, New Delhi.)..RESPONDENTS

WITH

WRIT PETITION NO.781 OF 2006

R.S. Narone,)
residing at B-170/6, Govt.Colony)
Bandra (E), Mumbai-400 051.)..PETITIONER

Versus

1.The State of Maharashtra)
notice to be served upon the)
Secretary to the Govt. of)
Maharashtra, G.A.D.Mantralaya)
Mumbai-400 032.)
2.The Executive Engineer, PWD)
North Division, Andheri (W))
Mumbai.)
3.Union of India, Notice to be)
served upon Secretary,Ministry)
of Home Affairs, New Delhi.)..RESPONDENTS

Mr. R.A. Dada, Senior Counsel with Mr. A.R. Shaikh
and Mr. S.R. Waghmare, for the Petitioner in Writ
Petition No.402 of 2006
Mr. A.R. Shaikh i/b.Mr. S.R. Waghmare for Petitioners
in Writ Petition No.383 of 2006 and 384 of 2006

Mr.R.M. Momin for Petitioners in Writ Petition

No.755, 780 and 781 of 2006

Mrs. N.V. Masurkar with Mr. Anurag Gokhale for

Respondent No.3 in Writ Petition No.383 of 2006

Mr.A.A. Kumbhakoni, Associate Advocate General with

Mr. P.G.Sawant, AGP for Respondent No.1 in Writ

Petition Nos.402 of 2006, 383 of 2006 and 384 of

2006.

Mr. A.A. Kumbhakoni, Associate Advocate General with

Ms. Geeta Shastri, AGP for Respondent No.1 in Writ

Petition Nos.755, 780 and 781 of 2006.

Mr. Y.R. Mishra with Mr. D.A. Dubey for Respondent

No.3 in All Writ Petitions.

Mr. Rui Rodrigues with Mr. N.D.Sharma for

Respondent NO.3 in Writ Petition No.384 of 2006

Ms. Ritu Singh with Mr. S.R. Shinde for Respondent

No.3 in Writ Petition No.780, 755 and 781 of 2006

CORAM: F.I. REBELLO &

& ANOOP V. MOHTA, JJ.

DATE : 28TH SEPTEMBER, 2006.

JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioner in Writ Petition No.402 of

2006 is an Association registered under the Societies
Registration Act of allocated Government Servants
originally from Ex-Madhya Pradesh and Hyderabad

States who had been posted in Mumbai and/or transferred from their home States to the then Bombay State under the State Re-organisation Act, 1956 pursuant to the orders passed by the Union of India. The Union of India in exercise of its powers under the State Re-organisation Act, 1956 passed transfer orders at the request and behest of the then Bombay State as it was facing problem of shortage of administrative staff. They have 67 members out of whom 35 have expired and their widows have become members of the Association. The prayer sought for in the petition is to challenge the notices of eviction served on them as being ultra vires and illegal and as also by way of writ of mandamus to direct the State of Maharashtra to make permanent alternate accommodation available to the members of the petitioner Association in accordance with the assurance given by the Respondents.

. The petitioner in Writ Petition No.383 of 2006 is the widow of an allocated employee, which was allocated to the Bombay State and was one of those amongst 1000 employees from Ex-Madhya Pradesh and Hyderabad States. Similarly petitioner in Writ Petition No.384 of 2006 is the daughter of a deceased allocated employee who came from Ex-Madhya Pradesh and Hyderabad State. The father of the petitioner in Writ Petition No.384 of 2006 expired during the course of employment and her mother was appointed on

compassionate ground. She has also has expired. The Petitioner in Writ Petition No.755 of 2006 was working as a Lecturer in Saurashtra (Gujarat) in the year 1959. Consequent to reorganisation of the erstwhile Bombay State the petitioner was transferred to Bombay and joined Sydenham College as a Lecturer in Bombay. The petitioner claims that he was transferred because he does not know Gujarathi and hence he is allocated Government servant. The petitioner in Writ Petition No.780 of 2006 was working as a typist in Home Department of the Government of Bombay. He was transferred to the then Mysore State. The petitioner was allotted a premises on permanent basis by the then Mysore Government. As the petitioner was Marathi speaking and was not knowing Kannada language the petitioner was once again reallocated to the Bombay State. The petitioner also claims to be an allocated Government employees. The Writ Petition No.781 of 2006 is by the son of Shri S.M. Narone who was transferred from Mysore State to Bombay State under the State Reorganisation Act. The petitioner claims that his father was also an allocated Government servant.

3. For the purpose of disposal of these petitions we shall refer to the facts in Writ Petition No.402 of 2006, though as stated in the earlier part of the judgment many of the petitioners in the other writ petitions would strictly not fall

within the expression allocated Government servants. It is not necessary for us to go into the facts prior to 12th January, 1989. Suffice it to say that the Association had filed a Petition before the Supreme Court being Writ Petition NO.1501 of 1986 against the State of Maharashtra. The Association had sought for a direction against the 1st Respondent directing it to provide permanent residential accommodation to its members, if necessary at concessional rates. By an order dated 12th January, 1989 the petition was dismissed. The order reads as follows:-

Writ Petition is dismissed. This order does not prevent the Government to give any relief it wishes for the petitioner."

. In other words it will be clear that in so far as the case of the members of the Association that they had a right to permanent residential accommodation on being allotted to the erstwhile Bombay State from the States of Hyderabad and Nagpur has been rejected.

4. What has to be now considered is whether after that judgment, the State of Maharashtra has held out any promise or given any assurance to the petitioners that they will be given permanent accommodation and/or that the Government in the past had permitted the petitioners to enjoy a benefit and

which the petitioners could legitimately expect to be permitted to continue to do until petitioners were communicated with some reasonable ground for its withdrawal or that the Government had assured the petitioners that they would give first an opportunity before withdrawing the benefit being enjoyed to warrant the application of the doctrine of legitimate expectation as is sought to be canvassed by the petitioners.

. We may refer to few facts for considering the issue that has been raised. On being allocated to the Bombay State the petitioners were granted temporary transit accommodation until they were allotted accommodation at Bandra in 1960. At the request of the Association, the State Government appointed a Legislative Council Committee to consider grant of permanent accommodation to such allottees. In the year 1976 the Committee recommended to the State Government to provide accommodation to them. The Central Government also recommended to the State Government the case of such employees pointing out that the problem was genuine. The State Government thereafter by communication dated 1st October, 1980 informed the President of the Association that the accommodation occupied by them could not be given on hire purchase nor also the request for alternative accommodation on retirement could be considered. They were, however, informed that out of the tenements constructed by the Maharashtra Housing

Board 5% reservation is made for retired Government servants and similarly Government is empowered to reserve 10% tenements out of the tenements constructed to the economically backward class under the Urban Land Ceiling Act. The President of the Association was informed that their members may make their own arrangement for residential accommodation and that the decision would be taken on merits in the matter of occupying the Government quarters till alternate accommodation is secured. In the meantime various interim orders came to be passed staying the eviction of members who had ceased to be government employees. By communication of 11th April, 1986 the Government took a decision that the request to allot tenement occupied by the allocated government servants permanently cannot be wholly granted. However, as a matter of assistance to the Government servants who had sold their former residential accommodations in Madhya Pradesh and Hyderabad was to be considered for allotment of tenements available under the scheme framed under the Urban Land Ceiling Act. The total number of tenements which could be allotted as a matter of assistance would be only 100. This appears to be an intra department correspondence. On 23rd February, 1998 the Government of India requested the State to re-examine the representation of allocated Government servants as it is pending for long time. The State thereafter by communication of 16th September, 2000 addressed to

the Joint Secretary, Ministry of Home Affairs informed that the allocated Government servants cannot claim the present Government accommodation on permanent basis. Subsequent thereto fresh eviction notices were issued. The present petitions have been filed against the notices of eviction.

5. On behalf of the Respondent State several affidavits have been filed by Ms. Charusheela Keshav Paranjape, Under Secretary, General Administration Department, Maharashtra State, Mumbai. It is pointed out that the members of the petitioner Association should vacate the premises and make it available to such Government servants who are presently in the employment of the State Government and who are in need of residential accommodation. It is also pointed out that at no point of time did the State Government give any assurance much less any commitment that the allocated Government servants would be given residential accommodation on permanent basis. Similarly, it is pointed out that the Central Government has also not given any such commitment. The Writ Petition filed by the Petitioner Association was dismissed by the Supreme Court. All this will indicate that the petitioners have no legal right. It is denied that the Government is yet to take a decision in the matter of allocation. It is pointed out that the Government has taken a decision and communicated the same to Union of India by letter

dated 16th September, 2000. After the receipt of that letter the State Government have received no communication from the Union of India. In so far as the existence of the letter dated 20th December, 1998 the respondents denied the same. It is pointed out that in respect of the allotment of 10% Urban Land Ceiling quota, the Association had informed the Government by communication dated 9th September, 1997 that on account of alleged poor financial conditions of the members of the petitioner association their members cannot think about even accepting such residential accommodation, even if offered to them. That accommodations, it is pointed out, were available at concessional rates and the members of the petitioner Association did not want to pay even such concessional rates for getting the residential premises on permanent basis. It is also pointed out that whenever a Government servant returns to his native place after retirement, an allowance called transfer grant and packaging allowance is granted to such a person. The President of the petitioner Association Mr. K.H. Nandkishore did avail of such allowance on his retirement which clearly demonstrates that he intended to return to his native place. Even after availing of such allowance Shri Nandkishore continues to occupy Government accommodation without vacating the same and returning to his native place. By additional affidavit of 24th April, 2006 it is reiterated that the President of

the Petitioner Association had refused the offer vide letter of 11th November, 1997. A meeting was convened by the Chief Secretary to explore the possibility of offering any new scheme for providing residential accommodation on permanent basis to the members of the petitioner Association and the officials who attended the meeting with their designation have been set out. From the discussion at the meeting it emerges that there were about 600 and odd employees who were similarly situated. Out of these employees, 536 employees were only provided with Government servant accommodations. Out of these 536 employees as on 7th September, 1973 only around 327 continued to occupy such accommodations. As on 22nd April, 1983 only around 171 continued to occupy such accommodations without vacating the same. It was, therefore, found that it would not be just and proper to offer any scheme for such families who have illegally continued to occupy the Government quarters for all these years. The State Government does not have any scheme to make permanent residential accommodation available even on payment of consideration to its ex-employees only on the ground that they were allotted Government servant quarters. It is set out that if any scheme is offered to these petitioners the other occupants of the Government quarters will also make such claim. The Supreme Court has also come down heavily upon the Governments for not taking effective steps for getting the

Government premises vacated. Out of 67 members of the petitioner association 34 members have expired and there is no question of making such offer to their family members. Consequent on the petitioners producing document of allotment in favour of some allocated employees one more affidavit came to be filed on 2nd May, 2006. It is pointed out that in respect of 10% accommodation under Urban Land Ceiling Act there are about 5030 persons and the allotments have been made in accordance with the waiting list. If a person is found eligible such a person is issued a letter of eligibility. That entitles the person to get his name included in the waiting list. As and when accommodation becomes available it is allotted to such person. The cases relied on behalf of the petitioners are only of those persons who have been held to be eligible and have been issued letter of eligibility. Three persons have been given letters of allotment. They however, did not avail of the same. As and when the turn of the other persons on the waiting list comes up, they would be offered letter of allotment.

6. From the above, it will be clear that for 10% quota of flats available under the Urban Land Ceiling Act, the members of the Association were given the choice to apply, provided they meet the eligibility criteria. Those who applied and were found eligible their names have been included in the waiting list.

One of the conditions is that these employees should not have accommodation in their home State. Apart from that some of them did not apply. The question is whether in these circumstances the Association on behalf of its members can contend that any action of the respondents is arbitrary. In our opinion there is no arbitrariness. The members were given a chance to apply. Many of them choose not to apply. There was a condition that those who have accommodation in their home State will not be eligible. Amongst those who applied, 13 were found eligible and some of those who were allotted, as they did not comply with the requirement their allotments were cancelled. In our opinion it cannot be said that the State acted unreasonably and the actions are arbitrary warranting any interference by this Court. The only assurance given has been fulfilled. If some amongst those allocated Government servants did not apply the respondent State cannot be faulted.

. It may be noted that once the petition filed the Association in the Supreme Court was dismissed their legal right to continue in the premises if any has been rejected. The order of the Supreme Court, however, did not prevent the State from considering the case of the members of the petitioner Association. Those cases were considered and the State Government had taken a policy decision not to grant accommodation. It should be borne in mind that

most of those who have been allocated Government employees have vacated their premises. Only 67 remained. It is not possible to accept the contention on behalf of the petitioners that these 67 and/or families of deceased members have a legitimate expectation to continue in the Government premises. The Government premises are service accommodation to be occupied till such time that the employee is in service in terms of the Rules and can continue to occupy for the period which the Rules permit. In the instant case the ex-employees and their families continue to reside for several years though they have no such right. The State has stayed the order of eviction from time to time. Once the State Government made its decision and informed the Union of India that they could not accommodate these allocated Government employees in our opinion nothing further survives and the occupation of these persons is illegal. Considering the judgment of the Supreme Court in **Civil Appeal No.4064 of 2004 S.D. Bandi vs. Divisional Traffic Officer, K.S.R.T.C. and others**, the State Government is bound to comply with the directions of the Supreme Court. It will not be possible for this Court under these circumstances to grant any relief.

7. In the circumstances we are clearly of the opinion that the members of the petitioner Association have no legal right to continue in the

premises. As far as other petitioners are concerned their case is no better than that of the petitioner in Writ Petition No.402 of 2006.

. In the circumstances we find no merit in these petitions.

. Rule discharged in all the Petitions. There shall be no order as to costs.

. Members of the Petitioners in Writ Petition No.402 of 2006 and Petitioner in Writ Petition No.383 of 2006 if still residing in the premises, along with all adult family members residing in those premises to file an undertaking to this Court within three weeks from today, that they will vacate the premises within six months from today in which event the State Government not to take steps to evict them. On failure to file undertaking it will be open to the Respondents to take steps to evict them.

. In case of other petitioners, the State Government to proceed to evict them after a period of three months from today.

(F.I. REBELLO, J)

(ANOOP V. MOHTA,J).